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Human Rights Committee

Concluding observations on the sixth periodic report of Germany

Addendum

Information received from Germany on follow-up to the concluding observations*

[Date received: 15 July 2014]

Introduction

1. By its note verbale dated 31 October 2013, the German Federal Government forwarded in a timely manner its statement regarding the three concluding observations mentioned in paragraph 20 (paragraphs 11, 14 and 15) of document CCPR/C/DEU/CO/6, which were adopted in the framework of the presentation of the sixth periodic report (CCPR/C/DEU/6) of Germany to the Human Rights Committee on 30 and 31 October 2012.

2. This statement addressed the recommendations of the Committee on paragraph 11 of CCPR/C/DEU/CO/6 regarding the suspension of the transfer of asylum seekers to Greece and on the – meanwhile completed – change to section 34a (2) of the Asylum Procedure Act for granting provisional relief; regarding paragraph 14 on ordering and implementing preventive detention, particularly the implementation of the distance requirement; and regarding paragraph 15 on the complete implementation of the legal provisions relating to the use of physical restraint measures in residential homes (among other things, by improved training of personnel, regular monitoring, investigation into complaints, and appropriate punishment for persons responsible).

3. At its 110th session, in March 2014, the Human Rights Committee analysed and evaluated the above-mentioned statement. The Committee had additional questions with regard to paragraphs 11 and 15. The Special Rapporteur for follow-up on concluding observations of the Human Rights Committee informed the Federal Government of this by

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correspondence dated 28 April 2014 and requested that a statement be made for the next follow-up report of the Human Rights Committee, by 5 August 2014.

4. The Federal Government hereby submits its statement on these additional questions.

In detail:

Paragraph 11 (B1): "On the suspension of transfers of asylum seekers to Greece, while the Committee welcomed the decision of the Interior Ministry to extend the suspension of transfer of asylum seekers to Greece until January 2014, it considered it necessary to request additional information on whether the State party will extend the suspension of transfers of asylum seekers to Greece beyond January 2014; and if not, on what basis the suspension of transfer of asylum seekers to Greece might be lifted."

5. The decision to suspend transfer to Greece pursuant to the Dublin Regulation has been extended an additional year and is now in effect until 12 January 2015. In all cases where transfer of third-country nationals to Greece is intended pursuant to the Dublin III Regulation, the Federal Office for Migration and Refugees will invoke the sovereignty clause and will carry out the asylum proceeding in Germany.

Paragraph 15 (B2): "The Committee took note of violations found out by the Medical Services of the health insurance funds in Saxony, but required additional information on investigations and appropriate sanctions for those responsible for violations of legal provisions related to the use of physical restraint measures in residential homes."

6. Based upon information provided by the Medical Service of the health insurance funds (*Medizinischer Dienst der Krankenversicherung*, MDK) in Saxony (current as of 4 July 2014), we are able to provide the following additional information:

7. The violations determined by the MDK in 2012 within the scope of the quality controls involve negative evaluations on questions 18.2 and/or 18.3

- of the guidelines of the GKV *Spitzenverband* (National Association of Statutory Health Insurance Funds) regarding assessment of the services provided by care facilities and their quality pursuant to section 114 of the Eleventh Book of the Social Code (SGB XI) (quality control guidelines) of 11 June 2009 in the version of 30 June 2009 and
- the MDK guidelines for quality control pursuant to sections 114 et seq. SGB XI for in-patient care, of 27 August 2009.

8. The questions and the MDK instructions for completion are as follows:

Question 18.2:

"Has consent or approval been given for measures involving deprivation of liberty?"

9. Instructions for completing 18.2:

"The answer should be "yes" if, in the case of measures involving deprivation of liberty, consent by the resident or judicial approval are documented in writing in the care file. To the extent that the measure involving deprivation of liberty has been carried out due to acute danger to oneself or another (justifiable emergency), the criterion has also been met."

Question 18.3:

"Is the necessity of measures involving deprivation of liberty reviewed regularly?"

10. Instructions for completing 18.3:

The necessity of measures involving deprivation of liberty is to be reviewed regularly (including with regard to alternative options) and documented. The frequency of review is dependent upon the illness and clinical condition of the resident."

11. In 2012, questions 18.2 and/or 18.3 were answered negatively in 24 cases of persons requiring care within the scope of 24 various quality controls by the MDK.

Question 18.2 *Negative response:*	*Question 18.3* *Negative response:*
11 persons requiring care (applies to both questions)	
10 persons requiring care	3 persons requiring care

12. Based on the instructions for completion, question 18.2 was always assessed negatively by the MDK if no consent was received from the person requiring care himself/herself, or judicial consent was not documented/issued, and the measure was also not justified by an acute risk to the patient or another person. This was the case for 21 persons requiring care – as shown in the table.

The MDK evaluators described the factual situation, for example:

- Type of measure involving deprivation of liberty,
- If applicable, by whom the measure was ordered, and
- Which reasons were given by the care facility for its use in the report and derived recommendations, measures and deadlines for implementation of those measures.

13. The measures involving deprivation of liberty were utilised by the care facility and/or utilised at the request of the person requiring care, his/her relatives, care guardian or general guardian in order to protect the person requiring care from falling and from serious consequences thereof. The following were used for this:

- Various protective devices at the side of the bed (railings, side panels, side plates)
- A stomach belt, groin strap and wheelchair belts to restrain the patient in bed or in the wheelchair.

14. The MDK considered the measures to be feasible as protective measures to avoid falls and serious consequences from falls.

15. The evaluation reports were sent by the MDK following a maximum of a 21-day processing period to the *Land* associations of statutory nursing care in the Free State of Saxony for further processing. In the opinion of the MDK, there was no case in which violations in care occurred that required the immediate involvement of additional supervisory authorities.

16. The MDK advised the care facilities in every case to apply for and/or obtain consent for previously not approved measures involving deprivation of liberty, following an assessment of their necessity and of alternatives.

17. Question 18.3 was assessed negatively by the MDK in the above-mentioned 14 cases if the necessity of the use of measures involving deprivation of liberty was not regularly assessed and documented, or an evaluation interval was selected that was not appropriate to the illness and clinical condition of the resident. The MDK expert evaluators evaluated the documentation of care and assessed the state of care and the general condition

(mobility, risks, cognition etc.) based on their personal impression and personal conversation with the person requiring care and the caregiver.

18. In their report, the MDK evaluators described the deficits, derived recommendations and measures from them, and set deadlines for implementing the measures; this represents a recommendation for care and was included in the evaluation notification of the *Land* associations of the statutory nursing care in the Free State of Saxony.

19. There were no cases in which the MDK evaluators had the impression that persons requiring care were restricted in their rights against their will or by the use of force. If this had been the case, the MDK would have immediately informed the competent authorities so that they could exercise their supervisory obligation and, if applicable, commence measures under civil and/or criminal law.

20. In its report, the MDK determines in conclusion that the care facilities are often uncertain about the legitimacy of measures involving deprivation of liberty, because judicial interpretations on the topic differ greatly.

21. In addition to consulting with regard to the legal legitimacy of the measures involving deprivation of liberty, consulting on the part of the MDK experts in the care facilities is also done against the background of the current state of the research, which shows that measures involving deprivation of liberty can be avoided. Furthermore, their use in the context of preventing falls may lead to considerable disadvantages for the person concerned.

22. The MDK evaluators, within the scope of their consulting assignment, also made staff members aware of alternatives in care as well as those in building and technology.